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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

TRAN, HANH VAN

ART UNIT PAPER NUMBER

3637

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,138

Applicant(s)

MARKLING ET AL.

Examiner

Hanh V. Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/6/05 & 5/19/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,15-22 and 24-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-12,15-22 and 24-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is the Final Office Action from the examiner in charge of this application in response to applicant's amendment dated 9/6/2005.

Election/Restrictions

2. Applicant's election without traverse of the claims 1, 3-12, 15-19, 21-22, and 24-30 which are drawn to a pallet in the reply filed on 9/6/2005 is acknowledged. Please noted that claim 33 depends on canceled claim 31, thus claim 33 also is canceled.

Drawings

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing

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sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

3. The proposed changes to the figures have been approved. Replacement drawings is required in response to this Office action in order to avoid abandonment of the instant application.

Claim Objections

4. Claims 17-18 are objected to because of the following informalities: (1) claim 17, line 4, "portionsto" should be "portions to", (2) claim 18, line 4, "to lock of said first and second portionsto" should be "to lock said first and second portions to". Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3-9, 11-12, and 24-30 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5,401,347 to Shuert.

Shuert discloses a thermoforming plastic pallet comprising all the elements recited in the above listed claims including, such as shown in Figs 10-19, a first portion 30 having a generally flat outer surface and an inner surface including a continuous plane of a plurality of undulating ridges and valleys disposed from the outer surface; a second portion 32 having an outer surface including a plurality of depending feet 36 and intervening channels, and an inner surface including a continuous plane of a plurality of undulating ridges and valleys displaced from the outer surface; wherein the undulating ridges and valleys of the inner surface of the second portion are molded in complementary shaped surfaces to interdigitates with and substantially contacts the undulating ridges and valleys of the first portion over all regions of interdigitation, the outer surface of the second portion includes a plurality of undulating ridges and valleys which ridges being defined as the feet and the valleys being defined as the spaced between adjacent feet.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shuert.

Shuert discloses all the elements as discussed above including the inner surface of the first portion being molded to the inner surface of the second portion, and tack off points being located along peaks and valleys of the first and second portions. The different being that Shuert does not clearly disclose the plastic pallet is formed from puncture-resistant plastics. It is well known in the art to form a plastic article from a puncture-resistant plastic material for the purpose of preventing damage to said article during transporting from one location to another. Therefore, it would have been obvious to modify Shuert by having the plastic pallet being formed from puncture-resistant plastic for the purpose of preventing damage to said pallet during transporting from one location to another.

10. Claims 15-19, 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shuert in view of USP 6,112,672 to Heil.

Shuert discloses a thermoforming plastic pallet comprising all the elements recited in the above listed claims including, such as shown in Figs 10-19, a first portion 30 having a generally flat outer surface and an inner surface including a plurality of undulating ridges and valleys disposed from the outer surface; a second portion 32 having an outer surface including a plurality of depending feet 36 and intervening channels, and an inner surface including a plurality of undulating ridges and valleys displaced from the outer surface; wherein the undulating ridges and valleys of the inner

surface of the second portion are molded in complementary interdigitation to the undulating ridges and valleys of the first portion, the outer surface of the second portion includes a plurality of undulating ridges and valleys which ridges being defined as the feet and the valleys being defined as the spaced between adjacent feet. The differences being that Shuert fails to disclose the pallet being a blow-molded pallet, instead of a thermoforming pallet.

Heil teaches that it is well known in the art to make members of a plastic pallet by blow-molded plastic in order to provide a process of manufacture that is predictable and reproducible, thereby decreasing variance and operating costs. Therefore, it would have been obvious and well within the level of one skill in the art to have the plastic pallet of Shuert being made of blow-molding process in order to provide a process of manufacture that is predictable and reproducible, thereby decreasing variance and operating costs, as taught by Heil, since both teach alternate conventional plastic pallet structure, used for the same intended purpose, thereby providing structure as claimed.

Response to Arguments

11. Applicant's arguments filed 5/19/2005 have been fully considered but they are not persuasive. In response to applicant's arguments pages 13-14 that Shuert provides spaces or openings between the rows of intermeshed bosses, while applicant's claimed invention does not provide spaces in the regions of overlapped interdigitation, the examiner takes the position that the claimed language fails to clearly stated that there is no spaced occur in the regions of overlapped interdigitation, thus fails to clearly distinguish from the prior art of record.

12. In response to applicant's argument on page 14 regarding the "wave-shaped", the examiner again takes the position that the claimed language fails to provide adequate structural limitations to the claims in order to clearly define applicant's "wave-shaped" from Shuert.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HVT *HVT*
November 27, 2005

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Lanna Mai